

**St. Regis Paper Company and District No. 99,
International Association of Machinists and
Aerospace Workers, AFL-CIO. Case 1-CA-
12715**

February 28, 1991

ORDER GRANTING MOTION

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On April 4, 1990, the Board issued a Notice to Show Cause why the Acting General Counsel's Motion for Reconsideration of the Board's April 3, 1989 Order denying the General Counsel's Motion for Clarification of the Board's Second Supplemental Decision dated August 10, 1987,¹ should not be granted.² On April 18, 1990, Champion International, Inc. (Champion), the successor to the Respondent, St. Regis Paper Company,² filed a Response to Notice to Show Cause and Opposition to Motion for Reconsideration.

In his motion for reconsideration, the Acting General Counsel contended that the Board had unjustifiably treated similarly situated discriminatees differently by not providing a make-whole remedy for Wayne Haslam, as it had for discriminatee Ervin Googins. The Acting General Counsel pointed out that the Board's Order Denying Motion for Clarification failed to take account of the possibility that Haslam had incurred losses directly attributable to his unlawful transfer from the Respondent's First Machias Lake facility to its Bucksport facility—losses that were distinct from the issue of whether the collective-bargaining agreement had been applied to him while working at First Machias Lake. Specifically, the Acting General Counsel alleges that both Haslam and Googins suffered additional transportation expenses and the loss of overtime work as the result of their unlawful transfer.

Champion contends that the Board properly resolved the remedy issue in its April 3, 1989 Order Denying Motion for Clarification of Second Supplemental Decision and Order. The Board had denied the General Counsel's Motion for Clarification requesting a make-whole remedy as to discriminatee Wayne Haslam on the grounds that (1) Haslam had stated in writing his decision not to return to First Machias Lake; (2) the fact that Haslam had suffered no loss of pay was undisputed; (3) there was no evidence that Haslam had been terminated, laid off, or otherwise had suffered a break in employment as a direct result of the Respond-

ent's unlawful discrimination against him; and (4) absent such evidence, Haslam was not entitled to backpay.

Champion further contends that the Board's finding that Haslam suffered no loss in pay is fully supported by the uncontested affidavits of Robert Cope, the Respondent's manager of its Maine Timberlands division; and it argues that the Acting General Counsel's motion for further consideration of the propriety of make-whole relief for Haslam is frivolous and is barred by doctrines of waiver and laches. (Champion notes that the underlying events took place more than a decade ago, and that the Board's Second Supplemental Decision rejecting the arguments made here issued more than 2-1/2 years ago.) Finally, Champion contending that it has been put to unnecessary expense in answering the Acting General Counsel's latest motion, seeks an award of costs and attorneys' fees in connection with the filing of its response.⁴

We have considered the parties' arguments and find merit to the Acting General Counsel's contention that our Order should be amended to permit discriminatee Haslam to be made whole for any loss of earnings attributable to his unlawful transfer. We find that the Board's denial of the General Counsel's Motion for Clarification overstated the effect of Haslam's 1980 statement that he did not wish to return to work at First Machias Lake. This statement did not waive Haslam's right to be made whole for any losses resulting from his discriminatory transfer by the Respondent. It only tolled the Respondent's make-whole liability after the effective date of Haslam's statement. Indeed, the Acting General Counsel states in the Motion for Reconsideration that Haslam is entitled to a make-whole remedy, with interest, from December 28, 1978, to May 7, 1980, when Haslam declined the Respondent's offer to transfer him back to First Machias Lake. Furthermore, the Cope affidavits on which Champion relies do not address the question of the alleged particular losses resulting from the transfer, and, therefore, the Acting General Counsel's submissions on this point remain uncontested. In any event, because we are not ruling on evidence submitted under a backpay specification, but are being asked to reconsider whether the Board's original Order should be clarified as providing for the recovery of such losses if they are proven, there is no burden on the General Counsel at this point to prove actual losses.

¹ 285 NLRB 293 (1987). Members Cracraft and Devaney were not then members of the Board.

² Member Cracraft would have granted the Acting General Counsel's Motion for Reconsideration and the make-whole remedy without issuing a Notice to Show Cause.

³ Champion International, Inc. refers to itself as the successor to St. Regis Paper Company in its Response to the Notice to Show Cause.

⁴ Champion attached an affidavit from its counsel contending, inter alia, that he never received a copy of the May 19, 1989 Acting General Counsel's Motion for Reconsideration referenced in the Notice to Show Cause. Assuming arguendo that Champion's counsel's assertions are factually correct, we emphasize that Champion has filed an Opposition to Motion for Reconsideration and that, therefore, it has had an opportunity to show cause why the Acting General Counsel's Motion for Reconsideration should not be granted. Champion has failed to show that it has been prejudiced by the asserted failure, and it has failed to proffer any evidence why the Motion for Reconsideration should not be granted.

Although, as Champion points out, we are resolving this issue many years after the unlawful conduct in question, we nonetheless see no reason for a discriminatee to suffer from our belated recognition of what was clearly an inadvertent error. See *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 264–265 (1969). There is simply no reason—factual or otherwise—for granting Haslam less relief than was accorded the estate of Googins. We accordingly grant the Acting General Counsel’s Motion for Reconsideration, and we shall amend the Order accordingly.⁵

ORDER

The Acting General Counsel’s Motion for Reconsideration of Order Denying Motion for Clarification of Second Supplemental Decision and Order is granted. Accordingly, the Board’s Order in the Second Supplemental Decision is modified and the Respondent, St. Regis Paper Company, Bucksport, Maine, its officers, agents, its successor Champion International, Inc., and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

“(a) Make whole Wayne Haslam for any loss of earnings he may have suffered, from the date of discrimination until the date he declined the Respondent’s offer to transfer him back to First Machias Lake, to be computed with interest as set forth in the amended remedy.”

⁵We also deny Champion’s request for costs and attorneys’ fees. In light of the Acting General Counsel’s specific admission that Haslam has waived the right to reinstatement at First Machias Lake, we shall delete from the Order and notice provisions requiring the Respondent, on request, to return Haslam to that location.

2. Substitute the attached notice for that in the Second Supplemental Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain our employees from or coerce them into withdrawing their membership in District No. 99, International Association of Machinists and Aerospace Workers, AFL–CIO by attempting to transfer them from our First Machias Lake garage facility to our Bucksport, Maine garage.

WE WILL NOT transfer employees from First Machias Lake to Bucksport because of their membership in District No. 99, International Association of Machinists and Aerospace Workers, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Wayne Haslam for any loss of earnings Haslam may have suffered by reason of the discrimination against him, with interest.

WE WILL make whole Ervin Googins’ estate for any loss of earnings Googins may have suffered by reason of the discrimination against him, with interest.

ST. REGIS PAPER COMPANY AND
CHAMPION INTERNATIONAL, INC.